



DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS-2022-0012]

Notice of Intent to Prepare an Environmental Impact Statement for the West Fork Battle Creek Watershed Plan, Carbon County, Wyoming

AGENCY: Natural Resources Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of Intent (NOI) to Prepare an -Environmental Impact Statement (EIS).

SUMMARY: The Natural Resources Conservation Service (NRCS) Wyoming State Office, in coordination with the USDA Forest Service and the U.S. Army Corps of Engineers (USACE), announces its intent to prepare an EIS for the West Fork Battle Creek Watershed Plan in the proximity of Savery-Little Snake River in Wyoming. The proposed Watershed Plan includes construction of a dam and reservoir on the West Fork of Battle Creek to provide for rural agricultural water management. NRCS is requesting comments to identify significant issues, potential alternatives, information, and analyses relevant to the Proposed Action from all interested individuals, Federal and State Agencies, and Tribes.

DATES: We will consider comments that we receive by **[insert date 45 days after date of publication in the FEDERAL REGISTER]**. Comments received after the 45-day comment period will be considered to the extent possible.

ADDRESSES: We invite you to submit comments in response to this notice. You may submit your comments through one of the methods below:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and search for docket ID NRCS-2022-0012. Follow the online instructions for submitting comments; or
- *Mail or Hand Delivery:* Andi Neugebauer, Wyoming State Conservationist, Natural Resources Conservation Service, 100 E B St #3, Casper, Wyoming, 82601. In your comment, specify the docket ID NRCS-2022-0012.

All comments received will be posted without change and made publicly available on www.regulation.gov.

FOR FURTHER INFORMATION CONTACT: Andi Neugebauer; telephone: (307) 233-6750; email: Andi.Neugebauer@usda.gov.

Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

Project updates will be posted on the NRCS Public Notices website: <https://www.nrcs.usda.gov/wps/portal/nrcs/main/wy/newsroom/pnotice/> and on the Forest Service website for the Medicine Bow-Routt National Forests and Thunder Basin National Grassland (MBRTB): <https://www.fs.usda.gov/main/mbr/home>.

SUPPLEMENTARY INFORMATION:

Purpose and Need

The primary goal of the proposed dam and reservoir is to provide a late season supplemental water supply to serve approximately 19,000 acres of irrigated lands in the Little Snake River Basin in Wyoming and Colorado. Under existing climate conditions, the Little Snake River Basin above its confluence with Sand Creek experience irrigation water shortages of approximately 12,000 AF. The objective is to reduce the late season

irrigation water and irrigation water shortages in dry years. The project may also mitigate future drought impacts to agriculture and natural resources resulting from climate change. In addition to the irrigation water supply, the proposed reservoir would also benefit fisheries, riparian and wetland wildlife habitats, and water-associated recreation.

Ecological objectives of the project include improvements to aquatic ecosystems and riparian habitats by supplementing stream flows during low-flow periods, and improvements to terrestrial habitat associated with irrigation-induced wetlands. Benefits are expected to accrue to these attributes to the confluence with the Yampa River including improvements to both cold water and warm water sensitive species.

Economic objectives of the project are to reduce late season irrigation water shortages resulting in increased pasture and hay production for regional ranching stability and to enhance habitats that support populations of wildlife and fisheries providing additional economic benefits to the region from hunting, fishing, and other recreational activities.

There are three agencies proposing actions supporting the West Fork Battle Creek Watershed Plan and dam and reservoir construction. Each agency's purpose and need are explained below.

NRCS

NRCS purpose and need for watershed planning and preparation of an EIS is to provide for rural agricultural water management. The Little Snake River Basin, above its confluence with Sand Creek, experiences an average irrigation water shortage of 12,000 acre-feet (AF). The primary purpose of the watershed plan is to increase water storage to improve late season water supply and reduce the irrigation water shortages in the Little Snake River Basin. Watershed planning is authorized under the Watershed Protection and Flood Prevention Act of 1954, as amended (16 U.S.C. 1001-1009), and the Flood

Control Act of 1944 (33 U.S.C. 702b-1). The watershed planning is being partially funded by the Wyoming Water Development Office (WWDO) under Wyoming Statute 41-2-112 and sponsored by the Savery-Little Snake River and Pothook Water Conservancy Districts.

Forest Service

The purpose of participation by the Forest Service in the project is to respond to a request for a land exchange by the Wyoming Office of State Lands and Investments (OSLI). The objective of the Forest Service land exchange program is to use land exchanges as a tool to implement National Forest System (NFS) land and resource management planning and direction, to optimize NFS land ownership patterns, to further resource protection and use, and to meet the present and future needs of the American people (Forest Service Manual (FSM) 5430.2). Basic authorities for the exchange of NFS land and interests in the land are in 7 CFR part 2.60 and FSM 1010. Specifically, the General Exchange Act of 1922 (16 U.S.C. 485 and 486) authorizes the exchange of land or timber that was reserved from the public domain for NFS purposes. Land exchange regulations are in 36 CFR part 254, subpart A, with further direction in FSM 5430. If the reservoir were constructed as proposed, the land exchange would be needed to eliminate the need for a special use permit for the reservoir and associated facilities and to provide for more effective and efficient management of the reservoir and surrounding lands. Pending further analysis, the proposed exchange may meet other guidelines specified in Appendix F of the 2003 Medicine Bow National Forest Revised Land and Resource Management Plan.

USACE

The purpose of participation by USACE in the project will be to respond to a section 404 standard individual permit application under the authority of The Clean Water Act to store approximately 10,000 AF for the purpose of providing late season

irrigation water to the Little Snake River Basin, above its confluence with Sand Creek, and enhanced habitat benefits downstream. The overall project purpose and need for USACE will be finalized after a section 404 permit application is submitted to USACE and will be subject to the 404(b)(1) guidelines (40 CFR 230).

The Sponsor intends to pursue authorization for construction of the West Fork Battle Creek Watershed project from the NRCS, under the Watershed and Flood Prevention Operations Program (Watershed Protection and Flood Prevention Act of 1954, as amended, Pub. L. 83–566). The Sponsor submitted a Sponsor Request for financial assistance through the NRCS’s Pub L. 83-566 Watershed and Flood Prevention Operations Program in July 2019 and secured funding in the amount of \$1.25 million to complete a Watershed Planning Study National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321-4347) document for the proposed project. The WWDO has provided an additional \$1.25 million for this effort.

The Sponsor, in coordination with the WWDO, has proposed to construct a 264-foot-high roller-compacted concrete (RCC) dam to store 10,000 AF of water with a surface area of 130 acres. The reservoir pool would contain three storage accounts: 6,500 AF of irrigation storage, 1,500 AF of storage to maintain a minimum bypass flow, and a 2,000-acre-foot conservation pool. The proposed reservoir would be constructed on the West Fork of Battle Creek just below the confluence of Haggerty Creek and Lost Creek approximately 20 miles east-northeast of Savery, Wyoming. The project would be located on private and public lands in the Sierra Madre Mountains within the Brush Creek-Hayden Ranger District of the Medicine Bow-Routt National Forests.

A proposed land exchange to construct and operate the proposed project would include selected parcels of the NFS lands within and adjacent to the West Fork Battle Creek Reservoir site on the Medicine Bow-Routt National Forests with deemed equivalent State lands. The proposed land exchange would include approximately 1,350

acres of Forest Service-managed lands within Medicine Bow-Routt National Forests and would include parts of Haggarty Creek, Lost Creek, and West Fork Battle Creek. Approximately 2,024 acres of state land inholdings located in the Medicine Bow-Routt National Forests have been proposed to be evaluated for the land exchange. The State lands deemed equivalent with the Forest Service-managed lands will be analyzed as part of the proposed project.

Preliminary Proposed Action and Alternatives

The EIS will examine the proposed action and alternative solutions to reduce late season irrigation water shortages in the Little Snake River Basin. Alternatives that may be considered for detailed analysis include:

Alternative 1 - No Action: No watershed plan would be implemented, and no dam or reservoir would be constructed.

Alternative 2 - Proposed Action: The proposed action will consist of the proposed dam and reservoir with a land exchange between the Forest Service and the State of Wyoming.

Alternative 3 – Proposed Action: The proposed action may consist of the proposed dam and reservoir with a different configuration of parcels for the land exchange between the Forest Service and the State of Wyoming.

Alternative 4 - Proposed Action: The proposed action may consist of the proposed dam and reservoir with a special use authorization from the Forest Service.

Alternative 5 - Proposed Action: The proposed action may consist of alternate locations for a dam and reservoir with equivalent land use authorizations as described in Table 1.

Alternative 6 - Proposed Action: The proposed action may consist of alternate means of achieving the watershed plan goals, such as water conservation projects and habitat improvement projects within the basin.

To inform development of these general alternatives, the Sponsor and WWDO have conducted studies within the Little Snake River Basin to determine irrigation shortages and supply conditions, as well as to identify potential alternative locations for reservoirs that would augment the irrigation water supply to meet downstream shortages. Potential locations were evaluated using criteria such as ability to meet user needs, access, multiple-use potential, geotechnical feasibility, landownership, resource constraints (cultural and natural resource concerns), ability to permit, and cost. Table 1 provides a summary of information for each potential location considered in these studies by the Sponsor and WWDO. Each location will be reviewed to determine if it should be carried forward for detailed analysis in the EIS.

Table 1. Summary of Preliminary Alternatives

Alternative Locations	Description
Big Gulch.....	This earthen dam site is located on State and private lands approximately 3 miles upstream of Savery Creek on Big Gulch, just downstream of Reader Flatts. This alternative could supply supplemental irrigation shortages on lower Savery Creek and the Little Snake River below the confluence with Savery Creek. Supply ditch capacity to the dam site is presently limited to 30 cubic feet per second. The reservoir would hold approximately 3,045 AF.
Lower Little Sandstone located on the Little Sandstone Creek.....	This earthen dam site is located on Bureau of Land Management, private, and NFS lands approximately 0.7 mile upstream from the confluence with Savery Creek. This alternative could supply supplemental irrigation shortages on lower Savery Creek and the Little Snake River below the confluence with Savery Creek. The reservoir would have a size of approximately 9,204 AF.
Upper Little Sandstone.....	This earthen dam site is located on Forest Service land at the Little Sandstone Creek approximately 2.5 miles west of the Little Sandstone Campground. This reservoir could supply supplemental irrigation shortages on lower Savery Creek and the Little Snake River below the confluence with Savery Creek. This reservoir would have a size of approximately 13,027 AF.
West Fork Battle Creek at Haggarty Creek (Lower Haggarty)	This earthen alternative is similar to the Proposed Action, but, instead of an RCC dam, this alternative would be an earthen dam. This dam site is located on Forest Service and private lands at West Fork Battle Creek approximately 0.5 mile downstream of the confluence of Lost Creek and Haggarty

Alternative Locations	Description
	Creek. This alternative could supply supplemental irrigation shortages on Battle Creek below the confluence with the West Fork and the Little Snake River below the confluence with Battle Creek. The reservoir would have a size of approximately 5,000 AF.
Haggarty Creek Near Copperton (Upper Haggarty) Site A.....	This dam site is located on Forest Service and private lands at Haggarty Creek approximately 0.6 mile downstream of the Highway 70 culvert for Haggarty Creek. This alternative could supply supplemental irrigation shortages on Battle Creek below the confluence with the West Fork and the Little Snake River below the confluence with Battle Creek. The reservoir would have a size of approximately 3,367 AF. Both RCC and earthen dam options were examined for this alternative.
Haggarty Creek Near Copperton (Upper Haggarty) Site B.....	This dam site is located on Forest Service and private lands on Haggarty Creek an additional 0.4 mile downstream from Upper Haggarty Site A. This alternative could supply supplemental irrigation shortages on Battle Creek below the confluence with the West Fork and the Little Snake River below the confluence with Battle Creek. The reservoir would have a size of approximately 3,367 AF. Both RCC and earthen dam options were examined for this alternative.
Battle Lake.....	This earthen enlargement dam is located on private and USFS lands on the downhill side of the existing Battle Lake. This reservoir site has a limited drainage area resulting in a limited amount of water supply. Additionally, due to topography, a very limited amount of storage could be provided without the expansion becoming inefficient.
Lower Cottonwood Creek	This dam site is located on private and USFS lands on Cottonwood Creek approximately 2.6 miles upstream of the Wyoming-Colorado border. This alternative would require a diversion from the Roaring Fork to be feasible, and the Sheep Mountain Ditch would need to be considerably enlarged to convey adequate flows. This alternative could supply supplemental irrigation shortages on the Little Snake River below the confluence with Cottonwood Creek. The reservoir would have a size of approximately 2,347 AF.
Upper Cottonwood Creek	This earthen dam site is located on private and USFS lands on Cottonwood Creek approximately 1.2 miles downstream of the point at which the existing Sheep Mountain Supply Ditch empties into Cottonwood Creek. This alternative would require a diversion from the Roaring Fork to be feasible, and the Sheep Mountain Ditch would need to be considerably enlarged to convey adequate flows. This alternative could supply supplemental irrigation shortages on the Little Snake River below the confluence with Cottonwood Creek. The reservoir would have a size of approximately 5,813 AF.
Roaring Fork.....	This earthen dam site is located on Forest Service land on the Roaring Fork Little Snake River approximately 3.4 miles upstream of the confluence with the Little Snake River. This alternative could supply supplemental irrigation shortages on the Little Snake River below the confluence with the Roaring

Alternative Locations	Description
	Fork and could supply the Hackmaster Ditch, which diverts water from the Roaring Fork and serves areas between it and the Little Snake River. The reservoir would have a size of approximately 3,419 AF.

Summary of Expected Impacts

The Proposed Action and alternatives may have significant local, regional, or national impacts on the environment. Preliminary issues for the project include changes to hydrology, changes to water quality within the reservoir and downstream from the elevated copper levels in Haggerty Creek, climate change impacts affecting agriculture, impacts to aquatic and terrestrial wildlife habitats, changes to fisheries and downstream threatened and endangered Colorado River fish species, impacts to cultural and Tribal resources, and economic outcomes associated with agricultural, recreational, tourism, and wildlife-related activities.

Anticipated Permits and Authorizations

- The following permits and other authorizations are anticipated to be required:
CWA Section 404 permit. Implementation of the proposed federal action would require a Clean Water Act (CWA) Section 404 permit from the U.S. Army Corps of Engineers, who is a cooperating federal agency on the planning effort.
- *CWA Section 401 permit.* The project would also require water quality certification under Section 401 of the CWA and permitting under Section 402 of the CWA (National Pollutant Discharge Elimination Permit), both of which would be issued by the Wyoming Department of Environmental Quality, a cooperating state agency on the planning effort.
- *Permit to Construct or Modify a Dam.* The project will require authorization from the Wyoming State Engineer for construction of a dam. Wyoming Water

Development Office is a cooperating state agency on the plan and is assisting in funding for the project.

- *Endangered Species Act (ESA) Consultation.* Consultation with the USFWS is being conducted as required by the Endangered Species Act of 1973. Anticipate permit for depletions from the Colorado River Basin.
- *Land Swap/OSLI Improvement authorization.* The project will require a separate USDA Forest Service special use permit for land use or an approved land swap between the State of Wyoming and USDA Forest Service.

Schedule of Decision-Making Process

There are three agencies with decisions to make related to the West Fork Battle Creek Watershed Plan and dam and reservoir construction. The Savery-Little Snake River Water Conservancy District and Pothook Water Conservancy District (collectively referred to as the Sponsor) intend to pursue authorization for implementation of the West Fork Battle Creek Watershed Plan from NRCS under the Watershed and Flood Prevention Operations Program. Due to the project's location, which would be partially on federal lands managed by the Forest Service, the OSLI has proposed a land exchange with the Forest Service. The project could require an individual permit from USACE under the provisions of section 404 of the Clean Water Act (33 U.S.C. 1344).

NRCS

NRCS may provide financial assistance to the Sponsor to implement the selected alternative identified in the West Fork Battle Creek Watershed Plan EIS.

Forest Service

The Forest Supervisor of MBRTB is the responsible official for the Forest Service's decision for the proposed land exchange. Once the NEPA analysis is complete, the Forest Supervisor will decide whether or not to proceed with the land exchange, the

rationale for the decision, and any conditions that will be attached to the selected alternative including, but not limited to, design criteria, mitigation, and monitoring.

USACE

Based on the analysis presented in the West Fork Battle Creek Watershed Plan EIS and through evaluation of a section 404 permit application, USACE may authorize a section 404 individual permit for the purpose of constructing a dam and reservoir as components of the West Fork Battle Creek Watershed Plan and, if so, under what terms and conditions

Public Scoping Process

Public meetings will be held in Baggs and Saratoga, Wyoming, and in Craig, Colorado, to determine the scope of the analysis presented in the EIS. Meetings are scheduled to occur in January 2023 and will be held at selected public venues in each location. Exact meeting locations and times will be determined closer to dates of the events. Public notices will be placed in local newspapers and on the NRCS and Forest Service websites. Additionally, letters providing details on the public meetings and the scoping comment and objection processes will be sent to federal and state agencies, Tribes, local landowners, and interested parties.

NRCS, Forest Service, and USACE invite the participation of and consultation with agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft EIS. Comments received, including names and addresses of those who comment, will be considered part of the public record. Comments submitted anonymously will be accepted and considered; however, they will not be used to establish standing for the Forest Service objection process.

NRCS, Forest Service, and USACE will use the scoping process to help fulfill the public involvement process under section 106 of the National Historic Preservation Act (54 U.S.C. 306108), as provided for in 36 CFR 800.2(d)(3). Information about historic

and cultural resources within the area potentially affected by the proposed action and alternatives will assist the NRCS, Forest Service, and USACE in identifying and evaluating impacts to such resources in the context of both NEPA and section 106 of the National Historic Preservation Act.

Native American Tribal consultations will be conducted in accordance with policy, and Tribal concerns will be given due consideration. Federal, state, and local agencies, along with other stakeholders that may be interested or affected by the NRCS, Forest Service, or USACE decisions on this project, are invited to participate in the scoping process and, if eligible, may request or be requested by the NRCS to participate as a cooperating agency.

Identification of Potential Alternatives, Information, and Analysis

NRCS invites agencies, Tribes, and individuals who have special expertise, legal jurisdiction, or interest in the West Fork Battle Creek Watershed Plan and dam and reservoir construction to provide comments concerning the scope of the analysis and identification of potential alternatives, information, and analyses relevant to the Proposed Action.

Forest Service Objection Process

The Forest Service decision for the project (whether or not to proceed with the land exchange) will be subject to the Forest Service's project-level pre-decisional administrative review process in 36 CFR part 218, subparts A and B (referred to as the "objection process"). Individuals and entities who submit timely, specific written comments regarding the proposed land exchange during any designated opportunity for public comment will have standing to file an objection. Designated opportunities for public comment include the initial scoping period described in this notice of intent as well as the 45-day comment period for the draft EIS. It is the responsibility of persons providing comments to submit them by the close of the established comment periods.

Only those who submit timely and specific written comments will be eligible to file an objection. Names and contact information submitted with comments will become part of the public record, will be publicly available on regulations.gov, and may be released under the Freedom of Information Act.

Authorities

This document is published as required by section 102(2)(C) of NEPA, the Council on Environmental Quality regulations (40 CFR parts 1500-1508), NRCS regulations that implement NEPA in 7 CFR parts 622 and 650, Forest Service regulations that implement NEPA in 36 CFR part 220, FSM 1950, Forest Service Handbook (FSH) 1909.15, and USACE under the provisions of section 404 of the Clean Water Act. Watershed planning is authorized under the Watershed Protection and Flood Prevention Act of 1954, as amended, (Pub. L. 83–566) and the Flood Control Act of 1944 (Pub. L. 78–534).

Federal Assistance Program

The titles and numbers of the Federal Assistance Programs in the Catalog of Federal Domestic Assistance to which this Notice of Funding Availability applies is 10.904 Watershed Protection and Flood Prevention. NRCS will coordinate the scoping process as provided in 36 CFR 800.2(d)(3) and 800.8 (54 U.S.C. 306108) to help fulfill the National Historic Preservation Act (NHPA), as amended review process.”

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive order are to foster an intergovernmental partnership and a strengthened federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. This program is subject to

the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

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To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or email: OAC@usda.gov.

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Andrea Neugebauer,
Acting Wyoming State Conservationist,
Natural Resources Conservation Service.

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